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The role of common goods in fostering shared responsibility, linking sustainable social cohesion to the reduction of inequalities

1. In 2004 a distinguished Italian scholar, Franco Cassano, published a book whose title is *Homo civicus. The reasonable madness of common goods*¹. Why is citizenship seen as directly related to common goods? And why are these goods referred to via an oxymoron – placing madness alongside reason? In fact, we must be aware that a new rationality is emerging and that we must deal with this change, with new forms of social, economic, cultural, political rationalities.

Over the past years we have been witnessing an important reshaping of the citizenship concept – it no longer defines the fact of belonging to a given country only; rather, it describes the very condition of individuals in the world. Every person is accordingly equipped with a “bundle of rights” they carry along throughout the world, and those rights can be exercised in different countries. This new, global citizenship characterizes and follows persons everywhere they are. Thus, the whole world becomes “a common place”. New problems of equality and solidarity are raising. Personal rights and common goods become mutually interrelated.

However, two problems arise immediately from this prospectively boundless citizenship. The former one has to do with the very quality of citizenship. It is no longer a formal requirement – a set of rights and duties allocated in a static perspective. Rather, it is a set of powers and opportunities an individual should be in a position to turn into reality – using them to determine the mechanisms of participation in politics and, generally speaking, public life, which is exactly the life of the “city”. This is why the words “*homo civicus*” have been used – they highlight this active stance whereby every citizen is turned into the leading character. And this is why reference has been made to a strong citizenship² – i.e. to underline the need for making available the tools required to breathe life into this stance.

But the expansion of citizenship goes hand in hand with a marked trend towards the privatization of a growing number of goods. Let me make a historical reference. In October 1847, shortly before the publication of the Marx and Engels’ Communists’ Manifesto, Alexis de Tocqueville looked at the future with a forward-looking sight: “Soon the political struggle will be between the Haves and the Have-nots; property will be the great battlefield”³. This struggle has continued without any interruption, even if its focus today is no longer land only, but all living beings, intangible things, air, water, knowledge. The battlefield has become larger. It takes up the whole world and includes many other rights – and these rights are being re-defined, re-written; they are regarded no longer exclusively as the individual’s province, but also in terms of their being shared rights.

This common goods issue is essential. New words are crossing the world creating a sense of a change of age – open source, free software, no copyright, free access to water, food, drugs, knowledge, Internet as fundamental rights of every person. The conflict between proprietary

¹ F. Cassano, Homo civicus. La ragionevole follia dei beni comuni, Dedalo, Bari, 2004.

² B. Barber, Strong Democracy. Participatory Politics in a New Age, University of California Press, Berkeley, 1984.

³ A. de Tocqueville, Souvenirs (1847), in Oeuvres complete, XII, Gallimard, Paris, 1964

interests and collective interests is not only over scarce resources, like water, whose scarcity is likely to become dramatically worse in the future. At the worldwide level we are witnessing the constant creation of new goods, of knowledge primarily, whose scarcity is not the effect of naturally-occurring events but of deliberate policies, and of the improper uses of legal tools as patents and copyright. We are risking a movement similar to what occurred in Seventeenth Century England with the "enclosures" of the common lands that had previously been freely accessible. This artificially-created scarcity, being contrived, threatens to deprive millions of people of extraordinary possibilities for their individual and collective growth, and of political participation. The destiny of old and new common goods is the key stake in a game that impacts on freedom and democracy.

Is the spirit of commons becoming one of the main features of our age? Can the growing identification of many peoples with many goods perceived as commons open the path towards commonly shared values, towards a community of values?⁴

Thus the focus is more and more on what has been called the "opposite of property"⁵, going beyond the dichotomy/opposition between private and public property. Another form of ownership is in front of us. Gaze over the future or return to the past? In fact, looking at the history and to the different cultures, what has been called the "possessive individualism"⁶ could be looked at neither as an universal model nor as a western exception, but rather as one of the possible variables of the relationship of the person with the outside world. Other models and other rules have been adopted in other times and in other parts of the world. But what it is happening nowadays is something new, for all. The awareness of the essential role can be played by the common goods perspective is emigrating from the periphery to the core of the legal systems, from a narrow, local to a global dimension.

2. The wide-ranging scope of common goods marks the boundaries of man's existence. Regarding air and water as common goods is more than a prerequisite to ensure environmental protection; it has to do with protecting health and safeguarding peace – which is still challenged by the "water wars" continuously taking place in different areas of the world. Indeed, water has ever been used as an instrument of power and certain societies have been described as examples of "hydraulic civilizations", especially in the Karl Wittfogel's landmark research on the Oriental Despotism⁷. Water must be free from the political power and from a purely market logic. On another side, appropriation of the living via patenting techniques deprives whole communities and cultures of the possibility to continue using, for free, knowledge and skills that had been a feature of their whole history. This is the new battlefield, where also individuals and their bodies as such must be protected against appropriation attempts.

We can look at the common goods dimension taking into account, for instance, two categories of goods – water and knowledge. On July 2010 the General Assembly of the UN declared access to clean water is a human right essential to the full enjoyment of life and all other human rights. The European Union and the Council of Europe have looked in the same way at the access to Internet and many countries have already declared it is a fundamental right of every person, from Finland to Greece, from Estonia to Ecuador. Access is becoming a key concept. But access to what and how? Even if we accept the idea that we are passing from the age of ownership to the age of access, as Jeremy Rifkin pointed out⁸, access remains an instrumental tool, so that its full implementation implies a redefinition of the legal status of the accessible goods. Otherwise, if access is mediated through a purely market oriented approach, it could become ineffective for million people – a key opening an empty room.

⁴ M. Delmas-Marty, Vers une communauté de valeurs?, Seuil, Paris, 2011.

⁵ J. Boyle, The Opposite of Property?, in 66 "Law & Contemporary Problems", Prbs. 1 (Winter-Spring 2003).

⁶ C. B. Macpherson, The Political Theory of Possessive Individualism. Hobbes to Locke, Oxford U. P., Oxford, 1962.

⁷ K. Wittfogel, Die orientalische Despotie. Eine vergleichende Untersuchung totaler Macht (1957), Köln, Berlin, 1962.

⁸ J. Rifkin, The Age of Access: How the Shift from Ownership to Access is Transforming Capitalism, Tarcher-Putnam, New York, 2000.

These goods reflect collective interests, are finalized to the fulfillment of collective needs, make possible the effectiveness of fundamental rights. Common goods are characterized by a diffused proprietorship, belong to all and to nobody: all people can have access, but nobody must have exclusive rights. They are shared *per se*. They must be managed starting from the equality and solidarity principles, improving different forms of interested people' participation. They reflect the dimension of the future, so that they must be managed in the future generations' interest too, making effective the intergenerational solidarity. In this sense, they are a truly "heritage of the humanity" and all interested person must be legitimized to intervene in order to make effective and to protect them. In the very nature of these goods there is the sharing of responsibilities among different actors, the effectiveness of equality, the building up of social relationships instead of selfish separation.

Let us come back to the case of water. I have already pointed out how it shows two different kind of scarcity – natural or artificial. The movement towards the affirmation of the water as a common good is now apparent everywhere in the world. I would like to quote the case of many municipalities (Paris and Berlin, for instance) and what is happening in Italy, where in the next spring there will be a referendum for repealing the statute that make possible the privatization of water services. And it's noteworthy that the proposal of this referendum has been subscribed by two millions people. At the same time we must look at the fact that in this very moment 900 millions people lack access to safe drinking water and that the growing lack of water makes increasingly critical the situation of the agriculture in many regions of the world. It has been estimated, for instance, that in 2050 the 90% of the Maghreb people will have serious problems of accessing water. I quote these cases because they makes apparent which are and will be the priorities of the political agendas; because they show how the water as an accessible common good is more and more a precondition for making effective the right to health, the right to food, the same right to live; because equal citizenship is challenged precisely on the ground of unequal access to the global common goods.

3. The horizon of the commons includes other goods – first of all health and food. Health is the core of a long battleground starting from a further instrumental right of access – to the drugs. The same right to live is at stake, continuously challenged by the proprietary approach through patenting and copyright.

In this field, as it is usual every time we are dealing with the common goods issue, we are not facing simple, linear processes. Every step is problematic. It is a multilevel, multistakeholders game.

Individuals and States, national and international players, pharmaceutical companies and citizens' organizations are continuously confronting and negotiating, often in a very conflictual way. But, despite some permanent criticisms, health as a human right is more and more widely recognized as an inescapable starting point, an essential reference. The balance is moving towards a non proprietary approach, mainly in the countries where the conflict between the protection of health and life and the market logic is more apparent and dramatic.

In this unrelenting struggle we can discover the use of many, different means. New approach to traditional instruments like mandatory licenses or to practices like parallel importations. Intense use of the political power. Informal emerging of coalitions of States, as testified by the approach followed in Brazil, South Africa, Thailand, supported by strong interventions by their supreme judiciary.

We stand out especially at the crossroads between knowledge and the fundamental right to health. The issue of drug patenting has long been and it is a real battlefield. Several countries – from Brazil to South Africa and India – have been claiming for the right to buy and/or to produce low-cost drugs (and to export them under some conditions) required to treat millions of patients affected by AIDS or malaria, by also infringing the rights vested in major pharmaceutical industry stakeholders. Here, access by all to the fruit of knowledge becomes a precondition to prevent health from

becoming the province of those who can afford to buy health on the market – whilst health should be looked at as a human right.

The crucial issue is if, when, where, how the property-oriented knowledge grounding the production of the drugs is or can or could be the object of a metamorphosis changing it, totally or partially, into a true common good. Thus we are facing not only an association between human rights and common goods, but rather a production of common goods via fundamental rights.

4. The struggle for the global common goods has followed different ways when we come to the right to food. This right – in its multiple specifications as secure, safe, adequate food – must be considered an essential element of the global citizenship. This approach is confirmed by the long way of the right to food from the Universal Declaration of Human Rights of the United Nations until the last documents like the Brazilian decree on Policy on Food Security and Nutrition (25 August 2010), the new Constitution of Kenya (27 August 2010), and a more substantial reform of the Indian constitution that is under way. It shows a shift from the top-down approach of the so-called “battle against the hunger in the world” to an horizontal one, where the interested countries become active actors, calling also for shared international responsibilities.. It means that we are facing a true and universal constitutionalisation of this right which corresponds to the more general constitutionalisation of the person, which it is a landmark of the more recent developments of the law (“The Union...places the individual at the hearth of its activities”: Charter of Fundamental Rights of the European Union, Preamble).

In this perspective, the progressive specification of the meaning and of the boundaries of the right to food is particularly important. At its very beginning, in the article 25 of the Universal Declaration of Human Rights, it was looked at as one of the elements of the general right to an adequate standard of living. Then, in particular in the article 11 of the International Covenant on Economic, Social and Cultural Rights, it is better qualified as “adequate” food and reaches a first level of autonomy in the minimal version of the “fundamental right of everyone to be free from hunger”. It is impossible to follow here step by step the successive evolution, giving birth to a wide human right that embraces in its complexity the whole existence of every person, and becomes not only an essential part of the citizenship, but one of the preconditions of the same democracy. We can summarize this evolution as follows.

We are facing a long march towards its full recognition as a human right passing:

- from a vague struggle against hunger to the specific right to access food;
- from a paternalistic approach to the responsibility of specific public bodies;
- from some assumptions at the level of principles to the effectiveness grounded on specific provisions.

But a further strategy is needed, looking at the way food is produced, through a turbocharged, supercapitalistic economy⁹ or respecting at the same time the rights of the producers and of consumers, now connected through the idea of “slow food”, also aimed at the health and environment protection. Thus the right to food opens a wider scenario on human rights and includes among the actors the future generations too.

Access is an instrumental tool for reaching adequate food. But, at this stage of the debate, we must reinterpret the reference to adequacy. Adequacy means to go beyond the minimalist, even if essential, approach of the freedom from hunger. Through the right to secure food we must not only feed the body, but the same dignity of the person. It implies that adequacy is not only a quantitative concept, but a qualitative one. As special rapporteur of the UN on the right to food, Jean Ziegler had pointed out that people have right to “adequate and sufficient food *corresponding to the cultural traditions* of the people to which the consumer belongs and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear”. We must take into account this indication if we want to build up a multicultural world. So the food security encounters the human

⁹ Reich, *Supercapitalism. The Transformation of Business, Democracy and Everyday Life*, Knopf, New York, 2007

dignity and the respect of cultural diversity (for instance, articles 1 and 22 of the Charter of Fundamental rights of the European Union); the principle of non discrimination (article 21 of the Charter of Fundamental Rights); the right to the free development of the personality (article 2 of the German Grundgesetz and of the Italian Constitution); the wide definition of the health by WHO as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”: the integrity of the person (article 3 of the Charter of Fundamental Rights). The right to food confirms its attitude to be a point of convergence of fundamental legal principles, making them concrete, so founding a new legal environment.

Regarded as an essential interface of a multiplicity of fundamental rights, the right to secure food is a powerful instrument against any form of reductionism, in particular against the transformation of people into passive consumers: better saying, into “consummated” people, according to the analysis by Benjamin Barber on the passage from citizens to clients¹⁰. The full implementation of the right to food is needed for avoiding this destiny and firmly defending the integrity and autonomy of every person.

Thus, the access to food becomes a constituent part of citizenship, so that the right to food must be looked at as a key issue for understanding the true situation of a society, a way for understanding how political, economic, social responsibilities are shared.

5. But, at this stage of its evolution, the right to food, especially in its version as right to secure food, participates in the difficulties of making effective all fundamental rights at the global level. The attempts to accompany the global dimension of fundamental rights with appropriate institutions have led to the possibility of setting up multiple “civil constitutions”, as has been pointed out by Guenther Teubner¹¹, linked to social and economic dynamics rather than to the recognition of the close relationship between citizenship and the legal status of certain categories of goods in the perspective of the exercise of political and constitutional powers. But these efforts have been criticized by those who think it would lead to a world without a centre, characterized by “institutional neo-medievalism”¹², precluding the establishment of common safeguards, and have been met with scepticism by a legal culture that does not think rights can be effectively enforced in a global dimension. But this hypothesis is partly refuted by the gradual establishment of a “global community of courts” linked to the protection of rights. And we are more and more aware that for the realization of an the effective protection of rights is no longer necessary the sole domain of traditional judicial proceedings, but it can put into effect by initiatives stemming from the civil society, which, using international documents as their point of reference, can put guarantees into practice. For instance, when news emerged that some transnational companies were getting children to sew shoes and soccer balls in India and Pakistan, civil rights groups threatened a boycott if the companies did not stop using child labour. They were successful for a variety of reasons, but here it is worth underlining that the effectiveness of children's rights was ensured by means other than those assigned to traditional legal mechanisms, such as taking legal action. The same logic could occur in the food's domain, where the pressure by the civil society and the direct action of the same citizens, making reference to their fundamental rights, can produce an informal but effective legal framework, so that their right to food must be taken into account seriously.

This case shows that we must go beyond the traditional distinction between legally binding and non-binding documents and raises the issue of the socio-political strategies for making effective the access to the global common goods.

6. Let us pass to the access to the Web. The Internet is the widest public space, the widest common never known in the history of the humanity, where a major redistribution of power is

¹⁰ B. Barber, *Con\$umed. How Market Corrupts Children, Infantilize Adults and Swallow Citizens Whole*, Norton, New York-London, 2007.

¹¹ G. Teubner, “Constitutionalising Polycontextuality”, in *Modern Law Review*, 2010.

¹² M. Castells, *End of Millennium*, Blackwell, Oxford, 2000.

under way. A space where everybody can have their say, acquire knowledge, create ideas and not just information, exercise their right to criticize, to discuss, to take part in the polity, and thus to build a different world of which everybody can claim to be an equal citizen. But all that can become more difficult, may be impossible, if knowledge is sealed behind proprietary fences without considering the novel nature of the situation we are faced with, which requires us to view knowledge as one of the most important of all common goods¹³. The importance of considering the access to Internet as a fundamental human right has been confirmed by the role played in the last months by the multifarious information and communication technologies in the revolution in many states of North Africa. The people's participation in the political life, this true birth of a global citizenship, must be grounded exactly in the consideration of the Net as a common, fighting against any form of digital divide, outside control, censorship.

Of late, with the help of various legal techniques, limitations have been imposed on the use of certain categories of goods that were freely available beforehand. Using what happens in the movie industry as a typical example, Lawrence Lessig refers in the starting pages of his book "The Future of Ideas" to the hindrances encountered in respect of various movies: because an artist claimed a chair resembled a sketch of a piece of furniture that he had designed; because an architect demanded money before a film could be released showing an allegedly copyrighted courtyard; because a sculptor had the same attitude having seen his art used in the background. And in a growing series of cases it was asked for money for films or pictures showing the facades of buildings in the street or very well known monuments (like the Tour Eiffel). As conclusion, Lessig reported the advice of a successful director to a young artist: "You're totally free to make a movie in an empty room, with your two friends"¹⁴.

These cases show not only that the misuse of copyright is narrowing the opportunities for using goods that were initially common – i.e., they could be exploited freely for certain purposes. Indeed, they also show that it is not enough to put emphasis on the coming of the age of access as if this were tantamount to getting rid of the conventional constraints of ownership. The expansion of access applies to a mechanism for using certain goods, in particular those that are not scarce and accordingly allow for non-competing uses. Still, access can be limited by the application of ownership-based approaches.

A new challenge, for instance, has been posed to Parliaments, that not only refers to the need to work out new ways of balancing the rationale of private ownership against the rationale of common goods. It also has to do with the very concept of citizenship. The true democratic novelty of the ITCs is not that they give citizens the deceptive illusion of participating in taking great decisions through electronic referendums. It consists in the power given to each and every one to make use of the extraordinary wealth of materials placed at their disposal by technology, to elaborate proposals, control the way power is exercised, and organise themselves in society. It is with this vast world – in which democracy is manifested "directly" without being superimposed upon "representative" democracy – Parliaments must find new ways of communicating, also by holding informal consultations, placing proposals on the Internet for which they seek the opinions of citizens, procedures which make it possible for proposals to be laid before Parliament by groups who are also given the right to intervene in the legislative process. The contrast between representative democracy and direct democracy could thus be overcome, and Parliamentary democracy would gain new legitimacy by putting itself forward as a permanent interlocutor of society.

In this perspective, we have to look at democracy as a process and at the Internet as the new crucial public sphere, a common for interaction, for the production of public discourse, for the creation of an "*espace citoyen*", a space for citizenship. The need to retain this feature of the Internet as a common is continuously challenged, in particular by market-driven approaches – since the commercial exploitation of the Web prevails by far on non-commercial uses. This is giving rise

¹³ C. Hess-E. Ostrom, Understanding Knowledge As a Common, Mit Press, Boston, 2007.

¹⁴ L. Lessig, The Future of Ideas. The Fate of the Commons in a Connected World, Random House, New York, 2001, p. 5.

to unbalances in the use of the Internet in a twofold perspective. Firstly, if one considers the web as an increasingly consumption-driven area – sort of a world-wide supermarket – one has to make it “safe” for its visitors; this means not only ensuring security and reliability of commercial transactions, but actually showcasing the web as an aseptic, pacified area where no conflicts can ever disturb consumption-prone behavior. The arguments relied upon to achieve this objective go beyond the need to fight against pornography. In fact, there is a trend towards doing away with anything that borders on the representation of unpleasant situations and more or less aggressive dissent – anything that departs from the “normality” model. Apparently, one still has to do with a common – in fact, a sort of creeping “market-driven censorship” is taking shape.

Secondly, payment- or fee-mediated access brings up the issue of the digital divide – the existing inequalities in use of the Internet – in terms of dual citizenship, since a direct relationship is set up between income and access to knowledge.

This is why one should also re-consider the equality issue. Equality is increasingly construed as equality in initial conditions rather than in terms of outcome. However, the access dilemma clearly shows that it is not enough to afford equal opportunities if only the happy few can make use of those opportunities.

The increasingly widespread awareness that knowledge is a “global public good”, as emphasized by some scholars like Luciano Gallino¹⁵, is bringing about the in-depth reconsideration of rules – starting from those that have to do with patents and copyright. There is a clear-cut demand coming up to prevent appropriation of the living, of biological diversity. This search for a new balance between the interests vested in authors, inventors and industry, on the one hand, and collective interests does not only result from a sort of rejection of market logic. There is actually a liberal stance that is much more radical and highlights the growing ineffectiveness of conventional tools – indeed, it goes as far as to propose the abolition of copyright.

Let me quote an example to clarify how access to knowledge is changing. The so-called free press, i.e. the newspapers that are circulated for free, is not a token of the publisher’s generosity or altruism; it simply stands for a different way to make profits. The huge potential of the Network, the richness of the Network, can only be used in full if the hindrances to the exploitation of such potential are removed – and those hindrances also give rise to a “non-market economy.” Novel legal approaches are already available and in use, such as those that have replaced the conventional closed logic of copyright by the open approach based on “creative commons”¹⁶.

However, access to knowledge should always entail the possibility of getting “exposed” to the most diverse opinions so as to compare them and develop one’s sense of criticism – a feature of the same democracy. Of course, this means rejecting censorship along with any monopolistic or dominant positions; it also means getting direct access to sources and information transparency. This is the very root of pluralism and independence of judgment. This is the way out from the *arcana imperii* – to get rid of secretive, and therefore oppressive, powers.

Free knowledge for all and democracy are more and more the same thing. Luigi Einaudi, a distinguished economist and former President of the Italian Republic, spoke about the need “to know in order to decide”. The great US justice Louis Brandeis remarked that “Sunlight is the best disinfectant.” Thus, knowledge is the very foundation of democratic decision-making and the precondition for a widespread control over participation.

This clearly shows the link between common goods and fundamental rights, common goods and free development of one’s personality – between common goods and public participation. However, the new surge of attention towards common goods – which have been termed “the opposite of property” – is not to be accounted for by the reference to institutional new medievalism as a way to describe the world in the Web age – i.e. a world without its centre, ruled by manifold institutions that are mutually connected via the Net. Several contemporary phenomena are tentatively assessed and accounted for mainly by drawing on medieval models – institutional polycentrism, *lex*

¹⁵ L. Gallino, *Tecnologia e democrazia. Conoscenze tecniche e scientifiche come beni pubblici*, Einaudi, Torino, 2007,

¹⁶ L. Lessig, quoted at note 14.

mercatoria. However, apart from any criticisms one might level against this approach, talking about common goods is not a thing of the past. It is actually a marker of new mechanisms – it has to do with the coming up of entities and goods that cannot fit in with the categories used in the past.

It is exactly to counter these attempts that Article 3 of the Charter of fundamental rights of the European Union, reflecting a common attitude of many international documents, prohibits the “making the human body and its parts as such a source of financial gains”. And the Universal Declaration on the human genome and human rights of the UNESCO states that human genome “in a symbolic sense [it] is the heritage of the humanity”.

“Humanity” and “mankind” are becoming buzzwords in legal documents, and “human” is the adjective used to refer to the dignity that is the starting point of the Charter of Fundamental Rights of the EU. Natural, historical and artistic goods are classed by UNESCO as “common heritage of mankind” – and this heritage includes the sea bottom and the moon, the Antarctic and the human genome. Crimes against mankind make up a new categories of offence, whilst the right of humanitarian interference has long been invoked in the presence of major crisis situations.

But what is humanity – this link between seemingly remote things such as the beauty of Venice and armed interventions in the Balkans; what is this thing that is the source of new categories of goods? It means hoarding memories of the past and gazing ahead at the future – being growingly aware that there is an increasing number of things in the world that should be kept away from national sovereignty, the overwhelming power of markets, and the instrumental use of individuals. Thus, mankind is about each and all of us, it is about intangibility and common goods – it reminds us that not everything can be boiled down to today’s events; it conjures up the vision of future generations and sets new rights before our eyes.

And then - who may take steps in the name of mankind or future generations? The concept of individual has ultimately attained concrete features, which has allowed identifying the stakeholders in rights issues immediately – whereas nowadays there is a real danger that we might fall back upon abstractness, which in turn may leave room for authoritarianism and the stepping in of entities that appropriate the power to represent mankind.

To avoid this danger, the reference made to mankind takes on different shapes and meanings. It is turned into the constraints imposed by international treaties that limit the appropriation power vested in States, which may not get hold of a portion of the moon or the Antarctic; it becomes an obstacle to the rapaciousness of economic interests that are keen to destroy the environment or patent the living in all its forms. It is turned into the solidarity commitment undertaken by most developed countries. It relies upon international courts having jurisdiction over crimes such as genocide. Thus, the abstract concept of mankind actually embraces rights, obligations, and responsibilities vested in tangible entities.

The common goods approach – the reasonable madness of common goods – challenges both foundations of modernity, i.e. ownership and sovereignty. Once these two reference categories are questioned, a new categorization is mandatory as based exactly on the primacy of common goods – which are freely accessible, but free from any exclusionary bias. Their protection should be shaped in such a manner as to go hand in hand with interests that are not focused exclusively on individuals but rather on our future – so as to be linked directly with safeguards for fundamental rights. “Should trees have standing?”¹⁷ – this was the title of an essay raising the basic question as to who is entitled to step in to protect the environment. This question should be answered – in a broader perspective – by affording the right to take action in court – but not only in court – to any person or body that has an interest in safeguarding any good whether currently or in future.

This new allocation of social and legal powers enhances citizenship and changes the standards applying to categorization and management of goods – thereby shaping the essential features of democracy.

¹⁷ C. D. Stone, “Should Trees Have Standing” (1972), in Should Trees Have Standing? Law, Morality and Environment, 3 ed., Oxford U. P., Oxford-New York, 2010.

7. Some final remarks.

First. One of the main effects of the qualification of a good as a common can be that access does not need to provide people of financial means because they are not per se in the realm of economic calculation. So the first role to be played by states and regulators is to select which are the goods accessible through the market and the goods irreducible to the market logic. Otherwise, if we continue staying on the economic rationality only, we risk an erosion of the same moral grounds of our societies.

Second. Dealing with the complex, difficult, continuously renewing relationship between fundamental rights and common goods, we encounter the traditional criticism against the “rhetoric” of the human rights”. But we must remember how many times this rhetoric has been and still is a powerful mean in the hands of the people for achieving more freedom, more democratic power. Only if we connect fundamental rights and common goods we can be more free in our own life and achieve responsibilities towards the others we share these goods.

Third. The direct connection between personal needs and goods necessary to their satisfaction, between community and resources changes the conceptual framework. At the place of the abstract subject of the western legal tradition we discover a concrete person with its material life and conditions. A “constitutionalism of the needs,” is emerging, made apparent especially through the new constitutions of the Latin America.

Fourth. In this wider perspective we can rediscover some forgotten, lost words. The “common interest”, whose reference disappeared, submerged by the force of the personal, private interests. The “social relationships”, because the very nature of these goods produces continuous interrelations, testified first of all by the Web. “The future”, cancelled by the “short-termism”, whilst the common goods embody the *longue durée* (long span) approach and obliges to take into account the future generations. “Equality”, as a direct effect of the way these goods are accessed and exploited. Thus all these words drive towards a fresh regards on what “democracy” means nowadays.

Finally. We must be aware that only the full implementation of the rights interrelated with the different common goods, whose legal qualification depends precisely on this relationship, can produce shared responsibilities and give mankind the opportunity to fight against the dramatic “human divide” of the contemporary world, challenging not only the equality among the persons, but their dignity and their same life.